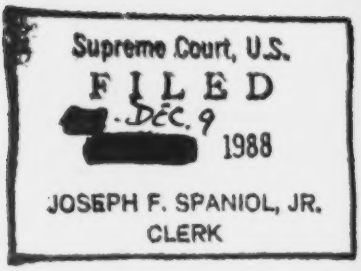
88-984



Case No. _____

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

October Term, 1988

OSVALDO ALVAREZ,

Petitioner,

vs.

TRANS WORLD AIRLINES, INC. and
INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS
DISTRICT LODGE 142,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OSVALDO ALVAREZ
c/o Bret Clark, Esquire
P.O. Box 53-1131
Miami Shores, Florida 33153
(305) 757-8515

QUESTIONS PRESENTED

1. May a union be held liable for breach of the duty of fair representation for failing to provide an attorney to represent an employee?

2. Did the trial court err in granting directed verdict in favor of a union and against an employee's claim for breach of the union's duty of fair representation where the court had previously denied a similar motion for summary judgment?

3. May a previous decision in favor of an employee on his claim to unemployment benefits have issue preclusion effect on a question of fact raised in a suit

brought in a federal court?

4. Did the district court err by ordering sequential trials of inconsistent claims and by refusing to submit a Title VII action to an advisory jury?

5. Did the district court err in this case by failing to exercise pendent party jurisdiction?

TABLE OF CONTENTS

Item	Page
Cover Page	1
Questions Presented	2-3
Table of Contents	4-5
Table of Citations	5
Reference to Opinion Below	6
Basis of Jurisdiction	6
Text of Constitutional and Regulatory Provisions Involved	7
Statement of the Case	8-22
Reasons for Granting the Writ	22-31
Appendix:	
Opinion filed September 13, 1988	

Findings of Fact and Conclusions of Law dated March 30, 1987

Order Denying Summary Judgment dated May 27, 1986

Order Denying Motion for Summary Judgment dated September 23, 1986

TABLE OF AUTHORITIES

Item	Page
Anderson v. Liberty Lobby, Inc., 106 S.Ct. 2505 (1986)	24-25
Lykins v. Pointer Incorporated, 725 F.2d 645 (11th Cir. 1984)	30
University of Tennessee v. Elliott, 106 S.Ct. 3220 (1986)	27
Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903 (1967)	23
Federal Rule of Civil Procedure 39(c)	28

REFERENCE TO OPINION BELOW

Alvarez v. Trans World Airlines, Inc. and International Association of Machinists and Aerospace Workers, District Lodge 142, Case No. 87-5379, unpublished opinion filed September 13, 1988 (11th Circuit 1988)

BASIS FOR JURISDICTION

This petition for writ of certiorari requests review of the judgment entered by the United States Court of Appeals for the Eleventh Circuit on September 13, 1988. No petition for rehearing has been filed. The Court therefore has jurisdiction pursuant to 28 U.S.C. section 1254(1).

TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, amendment V:

> No person shall be * * * deprived of life, liberty, or property, without due process of law.

Federal Rule of Civil Procedure 39(c):

> In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

STATEMENT OF THE CASE

Alvarez, a Cuban American, worked for nearly seventeen years as a ramp serviceperson, or baggage handler, for TWA. In early 1983 TWA attempted to fire Alvarez. The attempt failed, and Alvarez was reinstated to his posiiton with the company. Alvarez filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) against TWA over this discharge, claiming discrimination on the basis of national origin.

Three months thereafter, on Friday, May 13, 1983, Alvarez arrived at work and requested his paycheck. He was informed that his check was missing. In

the presence of Alvarez, a stop payment order for the missing check was issued and he was given a replacement draft. Alvarez then wrote down information pertaining to the missing paycheck, including the serial number on the check.

The following day Alvarez went to the airport branch of Barnett Bank of South Florida, N.A. (hereinafter "the bank"), where he prepared a statement, retained by the bank, stating that a check believed stolen was missing from the TWA payroll and should not be honored by the bank. Included in this statement was the information regarding the check, including the serial number, that Alvarez had written down the day before.

On June 8, 1983, a bank teller discovered the missing paycheck in the night depository, bearing a crude likeness of Alvarez' signature. The teller filled out a deposit slip, and attempted to deposit the funds into Alvarez' savings account.

After the check was returned due to the stop payment order, Alvarez was notified that his account was overdrawn. When he advised TWA about the incident, the company accused him of attempting to obtain two paychecks for the same pay period. The company thereupon terminated Alvarez effective August 4, 1983.

In accordance with the collective bargaining agreement, the union filed a grievance with the company over Alvarez'

discharge. On his own initative, and at his own expense, Alvarez prepared his defense to the accusations made against him, hiring a handwriting expert and assembling documents to prove his innocence. He repeatedly asked the union to provide him with the assistance of counsel. The union refused. TWA was represented by an attorney.

During the course of the grievance procedure the company distributed to the union several copies of a confidential letter, written by Alvarez, revealing that while employed at TWA he had been acting as an informant for the Federal Bureau of Investigations. In the past Alvarez had provided information to the Bureau regarding suspected acts of sabotage occurring within the airline by

union members and others.

At about this same time, Alvarez discovered a hand written note attached to his locker that said:

> They are goning (sic) to fire you Cuban bastard for ledron (sic).
>
> Yours Friends (sic)

"Ladron" is a Spanish term for thief.

While he was contesting his discharge, Alvarez also filed another charge of discrimination with the EEOC, this time alleging that the company had fired him in retaliation for his previous charge of discrimination.

He also filed a claim with the State of Florida for unemployment compensation. TWA contested his

eligibility for these benefits under a state law that prohibits a claim for unemployment compensation where an employee is discharged for misconduct. The hearing examiner found the allegation made by TWA against Alvarez to be false and awarded him unemployment benefits.

On August 9, 1984, Alvarez' case was finally brought before a System Board of Adjustment (hereinafter "SBA"), comprised of a representative of the company, a representative of the union, and an arbitrator. The night before the meeting, Alvarez met with union officials to discuss his case. The union official who was to represent Alvarez the next day confided to him that he did not know how to present his

case. He also refused to accept documents Alvarez offered to him to present on his behalf, including the favorable decision of the State of Florida regarding his unemployment compensation.

At the meeting the next day, Alvarez overheard the arbitrator tell a union official not to worry about the outcome of the grievance, since the arbitrator "owed one" to the union.

On August 13, 1984, the SBA denied the grievance. In an opinion authored by the arbitrator, the SBA concluded that the statement given by Alvarez to the bank three weeks before the stolen check appeared in the night depository was created by him after-the-fact, since the union presented no witness from the bank

to verify the authenticity of the document.

But the arbitrator then concluded that Alvarez had to have stolen the check, since the serial number of the check included by Alvarez in the statement given to the bank could only have been known by the person who stole the check, despite the fact that Alvarez had written this information down at the time the stop payment order was issued, and the fact that the arbitrator had already concluded that the statement was supposedly written after Alvarez had retrieved the stolen check from the bank.

A complaint was then filed against the company and the union on January 9, 1985, in the United States District

Court for the Southern District of Florida, for breach of the collective bargaining agreement in that Alvarez had been discharged without just cause, and for breach of the union's duty of fair representation. The suit also included a claim under 42 U.S.C. section 2000e (hereinafter "Title VII") for retaliation, a claim under 42 U.S.C. section 1985, and claims under state tort law.

The district court dismissed all of these claims except for the "hybrid" cause of action for breach of the collective bargaining agreement and the union's breach of the duty of fair representation, and the Title VII claim. The court denied Alvarez' motion to add the bank as a party to the action

for common law negligence, under the theory of pendent party jurisdiction. Thus, the basis for the court's subject matter jurisdiction over the remaining claims was 28 U.S.C sections 1331, 1343 and 1337.

Both defendants then filed motions for summary judgment, attaching extensive documentation and deposition transcripts in support of their motions. Alvarez in response argued that the evidence supported the conclusion that by failing to properly represent him in his grievance the union had breached its duty to fairly represent him. He also argued that there was sufficient circumstantial evidence for a finding that both parties had a motive to terminate Alvarez, and had entered into

at least a tacit understanding that he would not prevail in his grievance.

The district court denied the motions for summary judgment. In doing so the court said in an order entered on May 27, 1986 that:

> After careful consideration, this Court concludes that material issues of fact exist regarding the allegations that the Union breached its duty of fair representation of the Plaintiff and conspired with the Defendant, Transworld Airlines, Inc. ("TWA"), to terminate the Plaintiff's employment with TWA.

Trial of the case commenced on February 2, 1986. Alvarez' theory of the case was premised on the fact that he did not steal the check in question, a fact which became obvious to both parties upon even a cursory review of

the evidence. The issue then centered on the possible motives of the parties to have Alvarez terminated, and whether the deficencies in the union's handling of the grievance amounted to a breach of its duty of fair representation. Alvarez argued that the union and the company wanted him terminated because of his association with the F.B.I. As an alternative motive for the company, Alvarez argued that TWA retaliated against hîm for his EEOC complaints.

Because these issues were factual, and the theories inconsistent, Alvarez requested that the entire matter be heard by a jury in a single trial, with the jurors empaneled to hear the duty of fair representation claim sitting as an advisory jury for the issues relating to

the retaliatory discharge claim. Instead, the trial judge tried the duty of fair representation claim before a jury - and the Title VII seperately in a nonjury trial.

During the course of the trials, the trial judge ruled sua sponte on the grounds of relevancy that certain evidence pertaining to the underlying merits of Alvarez' discharge was inadmissible. This same evidence had been introduced by the defendants in support of their summary judgment motions.

The court also excluded the decision awarding Alvarez unemployment compensation, and refused to give that decision preclusive effect. The court did allow the introduction of some

evidence, however, of the union's refusal to provide Alvarez with an attorney. The union admitted in testimony that attorneys were assigned from time to time in other cases where employees were discharged by the company.

At the conclusion of the first trial, the judge directed verdict against Alvarez on his breach of the duty of fair representation claim. After the second trial, the judge granted TWA's motion to dismiss.

Alvarez appealed the subsequent judgment of the district court entered on April 20, 1987, to the United States Court of Appeals for the Eleventh Circuit. The judgment of the district court was affirmed and judgment entered

against Alvarez by the Court of Appeals on September 13, 1988. No petition for rehearing was filed.

Alvarez now seeks review of this judgment.

REASONS FOR GRANTING THE WRIT

This case presents important substantive and procedural issues concerning national labor law and national labor policy. In affirming the district court, the Court of Appeals decided issues of federal law which have not, but should be, settled by this Court, and decided others in a way contrary to applicable decisions of the Court:

1. Assistance of counsel. This Court has held that when Congress granted to

labor unions the power to act as the exclusive agent on behalf of all workers, thus subordinating the interests of the individual worker, a correlative duty was imposed upon unions to exercise that authority fairly. Vaca v. Sipes, 386 U.S. 171, 182, 87 S.Ct. 903 (1967). This duty of fair representation serves as a "bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law. 386 U.S. 171, 182, 87 S.Ct. 903, 912.

This case presents the important question of whether a union can be held liable for breach of the duty of fair representation by failing to provide assistance of counsel to an employee.

discharged from employment. The Court has not as yet determined this issue.

The union in this case refused to provide Alvarez the assistance of an attorney to handle a matter where the union representative himself acknowledged a lack of proficency. Although the union provided attorneys to represent some discharged employees, it arbitarily and unreasonably refused to do so in the case of Alvarez.

Whether and under what circumstances a union must provide an employee the assistance of counsel is an important issue that should be resolved by this Court.

2. The directed verdict. In the recent case of Anderson v. Liberty

Lobby, Inc., 106 S.Ct. 2505, 2511 (1986) the Court reaffirmed the general rule that a trial judge may not direct a verdict unless reasonable minds could not differ as to the appropriate verdict in a given case. The Court held that this standard mirrors that imposed in ruling on a motion for summary judgment. Id.

Yet the trial judge in this case, after reviewing the evidence, denied the motions of both defendants for summary judgment, finding that there was a genuine issue of material fact "regarding the allegations that the Union breached its duty of fair representation of the Plaintiff and conspired with the Defendant, Transworld Airlines, Inc. ("TWA"), to terminate the

Plaintiff's employment with TWA."

Thus, there was sufficient evidence to submit the issue of the union's breach of the duty of fair representation to a jury in light of the reasonable inference that the union had either failed to fulfill its duty to Alvarez, or had mishandled his case in bad faith. The district court therefore erred by not applying the same standard used in denying the motion for summary judgment to the motion for directed verdict.

In affirming the district court's order directing verdict, the Court of Appeals therefore decided this question of federal law contrary to applicable decisions of this Court.

3. Issue preclusion. The Court held in University of Tennessee v. Elliott, 106 S.Ct. 3220, 3227 (1986), that federal courts must give preclusive effect to fact-finding of a state agency, as part of a federal common law of preclusion.

In this case an administrative agency ruled in favor of Alvarez on a crucial factual question, finding that he did not steal the paycheck in question. The district court refused to give this finding preclusive effect, and refused to allow the introduction of this evidence at trial.

By affirming this ruling of the lower court, the Court of Appeals again decided a question of federal law contrary to the applicable decisions of

this Court.

4. Advisory Jury. Federal Rule of Civil Procedure 39(c) allows a district court to try any issue with an advisory jury. In this case, the district court refused to try the entire case before a jury by submitting issues pertaining to Alvarez' Title VII claim to the already empaneled jurors as an advisory jury.

As a result, Alvarez was required to present in seperate trials two inconsistent theories to the court regarding the company's motive for wrongfully terminating him. This procedure deprived Alvarez of the right to a fair trial.

Whether refusing to submit issues in a Title VII case to an advisory jury and

ordering sequential trials in an action consisting of inconsistent theories violates a party's right to due process is an important question of federal law which the Court has not, but should, resolve.

5. Pendent party jurisdiction. Finally, this case presents the important issue of whether the district court erred in not applying the doctrine of pendent party jurisdiction over the bank for Alvarez' claim of common law negligence. The district court, rather than declining to exercise its discretion to assert jurisdiction of the claim, simply refused to add the bank as a party without applying the applicable test in deciding whether to assert pendent jurisdiction.

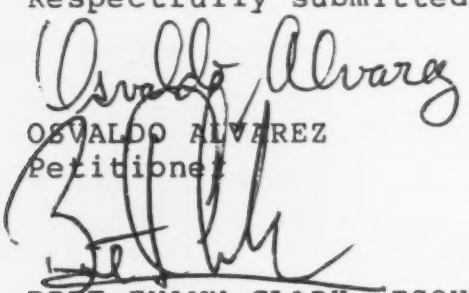
Although this Court has not expressly approved the doctrine of pendent party jurisdiction, the doctrine is recognized at least in the Eleventh Circuit. Lykins v. Pointer Incorporated, 725 F.2d 645 (11th Cir. 1984). The Court of Appeals in this case, however, affirmed the district court's refusal to apply the doctrine.

The Court should grant certiorari to resolve this previously undecided question of federal law.

Accordingly, Petitioner prays that the Court grant this Petition for Writ of Certiorari, vacate the judgment entered by the Court of Appeals, and remand this cause for a full trial on the merits.

Dated this 1st day of December, 1988.

Respectfully submitted,



OSVALDO ALVAREZ
Petitioner

BRET SHAWN CLARK, ESQUIRE
Attorney for Osvaldo Alvarez
P.O. Box 53-1131
Miami Shores, Florida 33153-1131
(305) 757-8515

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 87-5379

D.C. Docket No. 85-53

OSVALDO ALVAREZ,

Plaintiff-Appellant,
versus

TRANS WORLD AIRLINES, INC. and
INTERNATIONAL ASSOCIATION OF MACHINISTS
& AEROSPACE WORKERS DISTRICT LODGE 142,

Defendants-Appellees.

Appeal from the United States
District Court for the Southern
District of Florida

(September 13, 1988)

Before KRAVITCH and EDMONDSON, Circuit Judges, and Hoffman*, Senior District Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.

*Honorable Walter E. Hoffman, Senior U.S. District Judge for the Eastern Districtof Virginia, sitting by designation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 85-0053-CIV-KEHOE

OSVALDO ALVAREZ,

Plaintiff,

v. FINDINGS OF FACT AND CONCLUSIONS OF LAW

TRANS WORLD AIRLINES, INC. and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT LODGE 142,

Defendants.
_____/

THIS CAUSE came before the Court on February 2-6, 1987, for a sequential trial of Count I, Plaintiff's breach of duty of fair representation claim, which was tried before a jury,[1], Fed.R.Civ.P.) and of Count II, Plaintiff's Title VII retaliatory discharge claim, which was tried by the Court sitting without a

jury. After having heard testimony of the witnesses and received in evidence various exhibits, the Court hereby makes the following findings of fact and conclusions of law as to the Plaintiff's retaliatory discharge claim, pursuant to rule 52 of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

1. Plaintiff OSVALDO ALVAREZ was employed by TRANSWORLD AIRLINES, INC. ("TWA") as a ramp service employee from 1966 to August, 1983, when TWA discharged ALVAREZ for his violation of Rule 9 of the TWA General Rules of Conduct, which proscribes the knowing submission of "inaccurate and untruthful

information for on . . . a company record, report, or document."

2. Prior to TWA's August, 1983, discharge of Plaintiff ALVAREZ, TWA thoroughly investigated the matter of ALVAREZ's "missing paycheck." That investigation was conducted by TWA's security officer Jack Finning, who retained a handwriting expert, interviewed witnesses, and examined documents before recommending ALVAREZ's discharge. The check incident, which arose as a result of TWA's issuance of a substitute paycheck to Plaintiff, Plaintiff's submission of an affidavit of forgery, and the subsequent appearanec of the missing paycheck endorsed "O. Alvarez" at the Barnett Bank, airport branch, where ALVAREZ kept

an account, occurred in June and July, 1983. TWA's investigation thereof took approximately one month, and was concluded in late July, 1983. Investigating employee Finning was not aware of ALVAREZ's EEOC charge and testified that he did not know what the EEOC was.

3. At the time of his August, 1983, discharge, ALVAREZ was then a member of the INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS ("IAM"), and the IAM, on behalf of ALVAREZ, pursuant to the IAM/TWA Collective Bargaining Agreement, grieved the discharge, which grievance culminated in final and binding arbitration before the Systen Board of Adjustment on August 9, 1984; the System

Board of Adjustment decision denied the grievance and upheld TWA's discharge of Plaintiff on August 13, 1984.

4. In February, 1983, six months prior to his August, 1983 discharge by TWA, Plaintiff ALVAREZ, a Cuban American, filed a Charge of Discrimination, Charge No. 046830530, with the Equal Employment Opportunity Commission ("EEOC"), charging that TWA discriminated against him on account of his national origin.[2] The EEOC charge was made by ALVAREZ on the eve of grievance proceedings arising out of an earlier termination of ALVAREZ by TWA for insubordination, tardiness, and absenteeism for leaving work without permission of his supervisor. That earlier February discharge was

sucessfully grieved by the IAM for ALVAREZ, and he was reinstated to work effective on March 24, 1983.

5. Charge No. 046830530 was subsequently dismissed by the EEOC, and a notice of right to sue letter was issued. ALVAREZ did not, however, file suit upon the claims therein made.

6. Meanwhile, on January 20, 1984, Plaintiff ALVAREZ filed charge of Discrimination No. 046840393 with the EEOC, charging that in discharging him, for the paycheck matter in August, 1983, TWA was retaliating for the earlier filed Charge No. 046830530. Like the earlier February, 1983, charge of discrimination, the January, 1984, charge was filed on the eve of one stage

of the grievance proceedings instituted on behalf of ALVAREZ by the IAM. The EEOC dismissed Charge No. Ø36840393 and issued its Notice of Right to sue letter thereon on December 26, 1984.

7. Defendant TWA's station mannager Rudy Harris testified that TWA discharged ALVAREZ in August, 1983, because of his submission of false statements to TWA concerning the missing paycheck, in violatyion of Rule 9 of TWA's General Rules of Conduct, and that ALVAREZ's EEOC charge was entirely unrelated to his discharge. TWA's security investigator likewise testified that he had no knowledge of ALVAREZ's EEOC charges at the time he conducted his investigation. This testimony was unrefuted. Plaintiff presented no

evidence of any direct discrimination and no credible evidence of any indirect acts of discrimination against him by TWA either on account of his national origin, on account of his pursuit of EEOC claims, or otherwise. ALVAREZ's own testimony on this claim was only that he personally believed his job performance was satisfactory, that he believed he did not take his paycheck or sign his name thereto[3], that ten years before, some unidentified person once called him a "Cuban bastard," and he believed his asserted association with or employment by the FBI had something to do with it.

8. Any of the foregoing findings of fact which may represent conclusions of law are hereby adopted as conclusions of

law.

CONCLUSIONS OF LAW

1. To establish a prima facie claim of retaliatory discharge under Title VII, 42 U.S.C. section 2000e-3(a), where, as here, there is no direct evidence of retaliation, a Plaintiff must establish his engagement in statutorily protected expression; an adverse employment action; and a causal link between the protected expression and the adverse employment decision. Doyal v. Marsh, 777 F.2d 1526, 1534 (11th Cir. 1985); Simmons v. Camden Board of Education, 757 F.2d 1187, 1189 (11th Cir. 1985), re'g en banc den., 767 F.2d 938 (11th Cir. 1985), cert. den.,

__ U.S. __, 106 S.Ct. 385 (1985); Walker v. Ford Motor Co., 684 F.2d 1355, 1359, n. 3 (11th Cir. 1982). Once a prima facie case of discrimination has been established, the Defendant must articulate a legitimate, non-discriminatory reason for the adverse employment action. Doyal v. Marsh, 777 F.2d at 1534. See Texas Department of Community Affairs v. Burdine, 450 U.S. 2487, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Where a legitimate, non-discriminatory reason for the Defendant's action is shown, the Plaintiff must, thereafter, establish that the proffered reason was in fact pretextual. Simmons, 757 F.2d 1189.

2. In this instance, while the Court finds that Plaintiff engaged in

statutorily protected activities (filing of EEOC charges) and that Plaintiff's employer, TWA, discharged the Plaintiff, the Court finds that Plaintiff ALVAREZ has wholly failed to meet his initial burden as to the third ground and requirement: causal connection. Plaintiff Alvarez has not produced any credible evidence of any causal connection whatsoever between the EEOC charges filed by ALVAREZ and the discharge of ALVAREZ by TWA. Plaintiff ALVAREZ has not, therefore, carried his initial burden and has failed to establish a prima facie case.

3. Because, however, this Court heard the entire matter, witnesses having testified out of order, assuming arguendo Plaintiff ALVAREZ had in fact

established a prima facie case, this Court concludes further that Defendant TWA met its burden of articulating a non-discriminatory, legitimate reason for its discharge of Plaintiff ALVAREZ (ALVAREZ's violation of Company rules of conduct), a decision made by TWA only after conduct of a good faith investigation of the facts. The Court finds further that Plaintiff ALVAREZ presented absolutely no credible substantial evidence that Defendant TWA's articulated reason for its discharge of ALVAREZ was pretextual.

4. This Court further specifically finds that there has been no credible evidence of any sort that anyone--TWA (or Plaintiff's union, IAM)-- in any way discriminated against Plaintiff ALVAREZ

because of his national origin, his filing of EEOC charges, or his alleged association with the FBI.

5. Any of the foregoing conclusions of law which represent findings of fact are hereby adopted as findings of fact.

Thereupon, it is

ORDERED AND ADJUDGED that Defendant TWA's Motion for involuntary dismissal is GRANTED, and Defendants shall SUBMIT a proposed final judgment in accordance herewith within ten (10) days of the date of this Order. The Court further RESERVES JURISDICTION as to the issues of costs and attorney's fees.

DONE AND ORDERED in Chambers at Miami, Florida this 30th day of March,

1987.

(signed)

JAMES W. KEHOE
UNITED STATES DISTRICT JUDGE

---

1. This Court directed a verdict upon Count I in favor of Defendants IAM and TWA on February 5, 1987, in accordance with Rule 50(a

2. At trial, ALVAREZ made the additional charge that he believed TWA discriminated against him because of his asserted association with the FBI.

3. Plaintiff ALVAREZ testified variously that he did not know who took his paycheck, that he suspected a fellow employee took his check and that he, in fact, knew who took his check but could not reveal that knowledge during the trial. Plaintiff ALVAREZ earlier wrote a letter to TWA security officer Finning stating that he had consulted with a psychiatrist and hypnotist to put him in a trance to find out what happened to his check.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 85-0053-CIV-KEHOE

OSVALDO ALVAREZ,

Plaintiff,

v. ORDER DENYING SUMMARY JUDGMENT

TRANS WORLD AIRLINES, INC., et al.,

Defendants.
_____/

THIS MATTER arose upon the motion of the Defendant, International Association of Machinists and Aerospace Workers, District Lodge 142 ("IAM"), for summary judgment in its favor. After careful consideration, this Court concludes that material issues of fact exist regarding the allegations that the Union breached its duty of fair representation of the Plaintiff and

conspired with the Defendant, Transworld Airlines, Inc. ("TWA"), to terminate the Plaintiff's employment with TWA. Accordingly, it is

ORDERED AND ADJUDGED that the motion for summary judgment is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida this 27th day of May, 1986.

(signed)

JAMES W. KEHOE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 85-0053-CIV-KEHOE

OSVALDO ALVAREZ,

Plaintiff,

v.

ORDER DENYING MOTION
FOR SUMMARY JUDGMENT

TRANS WORLD AIRLINES, INC., et al.,

Defendants.
_____/

THIS MATTER arose upon the motion of the Defendant, Trans World Airlines, Inc. ("TWA"), for summary judgment against the Plaintiff, on the allegation of retaliatory discharge in Count II of the Amended Compalint, pursuant to Rule 56 of the Federal Rules of Civil Procedure. After careful consideration, it is hereby

ORDERED AND ADJUDGED that the

Motion for Summary Judgment is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida this 23rd day of September, 1986.

(signed)

JAMES W. KEHOE
UNITED STATES DISTRICT JUDGE